

THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

MATTIE ROSETTA JAMES,

Debtor.

CASE NO.: 21-55484-whl

CHAPTER 13

JUDGE WENDY L. HAGENAU

SWH 2017-1 BORROWER LP,

Movant,

vs.

MATTIE ROSETTA JAMES,

Debtor,

FREDERICK ASHFORD,

Non-Filing Co-Debtor,

NANCY J. WHALEY,

Trustee,

Respondents.

CONTESTED MATTER

MOTION FOR RELIEF FROM AUTOMATIC STAY
AND RELIEF FROM CO-DEBTOR STAY

COMES NOW, SWH 2017-1 BORROWER LP, (“Movant”) and hereby moves this Court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) and relief from the co-debtor stay with respect to certain real property. In support thereof, Movant shows as follows:

1.

Mattie Rosetta James (“Debtor”) having filed a voluntary petition pursuant to 11 U.S.C.

§ 1301, et seq., is subject to the jurisdiction of this Court.

2.

This Court has jurisdiction over this matter pursuant to 11 U.S.C. § 362.

3.

Movant is the landlord of certain real property located at 521 Thornbush Trce, Lawrenceville, GA 30046 (“Property”), currently leased to Debtor and Frederick Ashford (“Non-Filing Co-Debtor”) pursuant to a Residential Lease Agreement dated August 18, 2019 (“Lease”), with a current rental rate of \$1,880.00 per month (“Rent”) for a term that began on August 19, 2020 and ending on August 18, 2021, in accordance with the terms of the Lease. In the event Rent is not received by the third (3rd) calendar day of each month, a late fee of \$188.00 (“Late Fee”) is incurred. In addition to rent and late fees, Debtor is also required to pay utilities as they become due.

4.

The Property is listed as Debtor’s address in the Petition [Doc. 1, p. 2].

5.

Movant seeks relief in order to continue with dispossessory proceedings (“Dispossessory”) in Gwinnett County, Georgia to dispossess Debtor and Non-filing Co-Debtor, along with any other occupants of the Property, for failure to pay Rent and fees under the Lease. A copy of the Dispossessory complaint is attached hereto as **Exhibit 1**. The Dispossessory was immediately stayed once Movant was made aware of Debtor’s voluntary petition.

6.

Debtor and Non-Filing Co-Debtor defaulted under the terms of the Lease by failing to pay all Rent, Late Fees, and other applicable charges under the Lease as required for September 2019 through the date of the instant motion. As of the date of the instant motion, Debtor and Non-Filing Co-Debtor owe a total of \$47,761.75. Debtor and Non-Filing Co-Debtor continue to accrue arrearages of Rent, Late Fees, utilities, and other applicable charges.

7.

Debtor and Non-Filing Co-Debtor has caused Movant undue hardship. Movant is unable to continue with the Dispossessory and exercise its state law remedies due to the automatic stay and co-debtor stay and has incurred costly attorney fees as a result of Debtor's and Non-Filing Co-Debtor's actions and filings.

8.

Because Debtor and Non-Filing Co-Debtor have demonstrated a continuing default and a clear inability to make payments required under the Lease and have not submitted any documentation to the contrary under the provisions of the bankruptcy code, Movant is not adequately protected. For the above and foregoing reasons, Movant asserts that sufficient cause exists to waive the requirements of Bankruptcy Rule 4001(a)(3).

9.

Because there is no equitable or legal interest in the Property which could benefit the Estate and such property is not part of the Estate, the Trustee's interest should be deemed abandoned, the Lease rejected, and the stay should be lifted with regard to Movant to allow it to continue with the Dispossessory to dispossess Debtor and Non-Filing Co-Debtors, along with their personal

property, and obtain a monetary judgment as to unpaid post-petition Rent, to the extent permitted by law, while Debtor and Non-Filing Co-Debtors remain in possession of the Property.

10.

Because the Lease provides that Debtor is responsible for Movant's attorney's fees in pursuing legal action, Movant is entitled to reasonable attorney's fees from Debtor.

WHEREFORE, Movant prays for the following relief:

- (A) An Order GRANTING Movant relief from the automatic stay under 11 U.S.C. § 362 and relief from the co-debtor stay for all purposes allowed by applicable law, including but not limited to, authorizing Movant to exercise its state law remedies and initiate and/or continue the Dispossessory against Debtor, Non-Filing Co-Debtor, and all other occupants and to remove all personal property and personal effects therefrom, as well as a monetary judgment for unpaid post-petition amounts currently due under the Lease to the extent permitted by law – without seeking collection of the judgment unless an order is obtained from this Court stating the same;
- (B) That the Lease be deemed rejected;
- (C) The Court award Movant reasonable attorney's fees, costs, and fees of bringing the instant motion;
- (D) The Court waive the 14-day stay of Bankruptcy Rule 4001(a)(3); and
- (E) For such other and further relief as the Court deems just and equitable.

Dated: July 28, 2021

**Goggans, Stutzman, Hudson,
Wilson & Mize, LLP**
990 Hammond Drive, Suite 300
Atlanta, Georgia 30328
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Facsimile: (404) 843-2317
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Respectfully Submitted,

/s/ Lynn M. Wilson
Lynn M. Wilson
Georgia Bar No. 768852

/s/ Brandi N. Wade
Brandi N. Wade
Georgia Bar No. 868917
Counsel for Movant

Exhibit 1

Dispossessory Complaint

SWH 2017-1 Borrower LP Invitation Homes 8601 Dunwoody Place Ste 520 , Sandy Springs, GA. 30350		DP#: 919679
(Plaintiff(s) Name & Address) Day Phone Number: _____		VS.
Fredrick Ashford, And All Other Occupants 521 Thornbush Trace Lawrenceville, GA 30046		(Defendant(s) Name & Address)
Telephone numbers: _____		

MAGISTRATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DISPOSSESSORY PROCEEDING

CASE NO. 19M42739

INFO & FORMS ON THE INTERNET
E-mail: mag@gwinnettcourt.com

Personally appeared the undersigned affiant who on oath says that affiant is ~~(owner)~~ ~~(attorney at law)~~ ☒ (agent) for Plaintiff(s) herein, and that Defendant(s) is/are in possession as tenant of premises at the address as stated above, in Gwinnett County, the property of said Plaintiff(s). Plaintiff(s) attest(s) that there are no other person(s)/entity(ies) or known occupant(s) with whom Plaintiff(s) has/have a landlord tenant relationship. FURTHER THAT: (check applicable claim(s))


☒ tenant fails to pay the rent which is now past due;
☐ tenant holds the premises over and beyond the term for which they were rented or leased to tenant;
☐ tenant is a tenant at sufferance;
☐ Other: _____

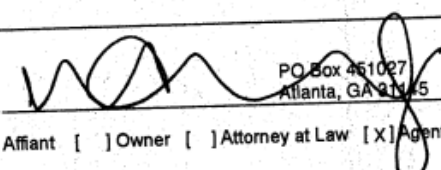
AND

THAT Plaintiff(s) is/are entitled to recover any and all rent that may come due until this action is finally concluded. Plaintiff(s) desires and has demanded possession of the premises and Defendant(s) has/have failed and refused to deliver said possession. WHEREFORE, Plaintiff(s) demand(s) (a) possession of the premises; (b) past due rent of \$ \$2,905.00 \$ \$1,825.00 month; (c) rent accruing up to the date of judgment or vacancy at the rate of \$ \$80.83 (30d/m) per day. (Calculate daily rental rate, if seeking rent accruing to date of judgment or vacancy.)

(d) 15% Attorney Fee Added if not Paid + \$179.00 Late Fee + \$56.00 Court Cost
\$200.00 Conseq Exp + \$165.30 Utilities + \$7.18 Alarm Fee

Sworn to and subscribed before me,
this 22nd day of Nov, 2019.

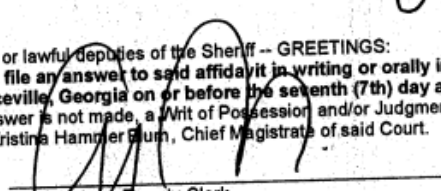

Magistrate or Deputy Clerk


Affiant ☐ Owner ☐ Attorney at Law ☒ Agent

PO Box 461027
Atlanta, GA 30316-5

SUMMONS: The Sheriff of Gwinnett County or lawful deputies of the Sheriff -- GREETINGS:
The Defendant(s) is/are commanded and required to file an answer to said affidavit in writing or orally in person at the Magistrate Court of Gwinnett County, Lawrenceville, Georgia on or before the seventh (7th) day after the date of service of this summons and summons. If such answer is not made, a Writ of Possession and/or Judgment shall issue as provided by law. Witness the Honorable Judge Kristina Hammer Burn, Chief Magistrate of said Court.

This 22 day of Nov, 20 19


Magistrate or Deputy Clerk

WRIT OF POSSESSION

To the Sheriff of Gwinnett County or lawful deputies of the Sheriff: You are hereby commanded to remove said Defendant(s), and any other person(s)/entities whose presence upon the premises is through the tenancy of Defendant(s) together with Defendant(s)/their property thereon from said premises and to deliver full and quiet possession of the same to the Plaintiff(s) herein effective: 1. (Instantly); or 2. (On _____, 20____); or, 3. Pursuant to the terms of a consent judgment filed herewith dated _____, 20____.

This _____ day of _____, 20____.

Magistrate

Q:\Magforms\forms\MAG 30-02 Dispossessory proceeding

Copy from Re: Search

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IN RE:	CASE NO.: 21-55484-whl
MATTIE ROSETTA JAMES,	CHAPTER 13
Debtor.	JUDGE WENDY L. HAGENAU
SWH 2017-1 BORROWER LP, Movant, vs. MATTIE ROSETTA JAMES, Debtor, FREDERICK ASHFORD, Non-Filing Co-Debtor, NANCY J. WHALEY, Trustee, Respondents.	CONTESTED MATTER

REQUEST FOR HEARING

PLEASE TAKE NOTICE that SWH 2017-1 BORROWER LP, (“Movant”) has filed a Motion for Relief From Automatic Stay and Relief From Co-Debtor Stay, dated July 28, 2021, and related papers with the Court seeking an order modifying the automatic stay and co-debtor stay.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the motion in **Courtroom 1403, Richard B. Russell Federal Building and U.S. Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303, at 10:45 a.m. on August 25, 2021.** “Given the current public health crisis, hearings may be telephonic only. Please check the [“Important](#)

[Information Regarding Court Operations During COVID-19 Outbreak](#)” tab at the top of the GANB Website prior to the hearing for instructions on whether to appear in person or by phone.”

Your rights may be affected by the Court’s ruling on these pleadings. You should read the pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you filed a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that the Clerk receives it at least two (2) business days before the hearing. The address of the Clerk’s office is: **Clerk, United States Bankruptcy Court, Room 1403, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303**. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the motion for relief from the automatic stay and co-debtor stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty (30) days of filing the motion and agrees to a hearing on the earliest possible date. If the Court cannot render a final decision within sixty (60) days of the date of the request, Movant waives the requirement that a final decision be issued within that period.

Dated: July 28, 2021

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Wilson & Mize, LLP**
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Respectfully Submitted,

/s/ Lynn M. Wilson
Lynn M. Wilson
Georgia Bar No. 768852

/s/ Brandi N. Wade
Brandi N. Wade
Georgia Bar No. 868917
Counsel for Movant

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MATTIE ROSETTA JAMES, Debtor,	
FREDERICK ASHFORD, Non-Filing Co-Debtor,	
NANCY J. WHALEY, Trustee, Respondents.	

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of Movant's **MOTION FOR RELIEF FROM AUTOMATIC STAY AND RELIEF FROM CO-DEBTOR STAY** and **REQUEST FOR HEARING** electronically or by depositing same in the United States First Mail in a properly addressed envelope to each with adequate postage thereon as follows:

MATTIE ROSETTA JAMES
521 Thornbush Trce
Lawrenceville, GA 30046

FREDERICK ASHFORD
521 Thornbush Trce
Lawrenceville, GA 30046

NANCY J. WHALEY
Standing Chapter 13 Trustee
303 Peachtree Center Ave
Suite 120
Atlanta, GA 30303

Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

Dated: July 28, 2021.

Respectfully Submitted,

/s/ Lynn M. Wilson
Lynn M. Wilson
Georgia Bar No. 768852

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/s/ Brandi N. Wade
Brandi N. Wade
Georgia Bar No. 868917
Counsel for Movant

DISTRIBUTION LIST

Debtor

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Lawrenceville, GA 30046
Pro Se

Non-Filing Co-Debtor

FREDERICK ASHFORD
521 Thornbush Trce
Lawrenceville, GA 30046

Trustee

NANCY J. WHALEY
Standing Chapter 13 Trustee
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Suite 120, SunTrust Garden Plaza
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